

(1990) 08 BOM CK 0020

In the Bombay High Court

Case No : Writ Petition No. 2025 of 1983 with 3030 of 1989

Niranjana Mohanlal Kapadia and etc.

APPELLANT

Vs

State of Maharashtra and others

RESPONDENT

Date of Decision : 08-08-1990

Acts Referred:

Bombay Land Requisition Act, 1948 — Section 7, 8C(2), 9(1A)
Constitution of India, 1950 — Article 226

Citation : AIR 1991 Bom 201

Hon'ble Judges : M.L. Pendse, J

Bench : Single Bench

Advocate : A.Y. Bookwala, Mr. Srivastava, Mr. M.A. Navalkar and A.N. Jakhadi, for the Appellant; S.M. Sakhardande, D.S. Sakhalkar and S.G. Surana, for the Respondent

Judgement

1. Both these petitions filed under Article 226 of the Constitution of India can be conveniently disposed of by common judgment as the dispute involved in these petitions is interrelated. The facts giving rise to filing of these two petitions are as follows:--

2. Niranjana Mohanlal Kapadia, the petitioner in Writ Petition No. 2025 of 1983, is the owner of Chunilal Karsandas Building situated at 159/2, Cavel Cross Lane No. 6, Bombay 400 002. Room No. 3 in this building was requisitioned by Government of Bombay on August 31, 1957 in accordance with the provisions of the Bombay Land Requisition Act, 1948 for a public purpose, that is, for housing a victim of house collapse. On September 4, 1957 the premises were allotted in favour of Shankar Balwant Salunkhe, the father of petitioner in Writ Petition No. 3030 of 1989. The allottee S. B. Salunkhe expired on February 27, 1978 and thereafter the room continued in occupation of his son Popat. Landlord Kapadia filed Writ Petition No. 2025 of 1983 on August 30, 1983 and the reliefs sought are (a) directing the State Government to forthwith withdraw or cancel the requisition order, and (b) directing the State Government to deliver vacant, quiet and peaceful possession to the landlord. The petition was admitted on September

2, 1983.

3. During pendency of this petition, on October 17, 1988 the Competent Authority constituted under the Act, served show cause notice u/s 8C(2)(a) of the Act on Popat to show cause why he should not be evicted from the premises. In response to the notice Popat appeared before the Competent Authority and claimed that the room should be allotted in his favour. It was claimed that the original allottee was not a Government servant nor is Popat but the room was allotted for the benefit of the original allottee and the member of his family, which was incidently a joint Hindu family. Popat claimed that the room was allotted to his father as the accommodation available with his father was a room in a chawl at Argyle Road, Bombay and the building was acquired by the Government for erecting the Carnac Receiving Station of Tata Power Company. Popat claimed that the requisitioned room was allotted to his father when his father was required to vacate the room in the building which was acquired for construction of Carnac Receiving Station. The Competent Authority did not accept the claim. The Competent Authority noticed that even in the past Popat had requested to pass a fresh order of allotment in his favour but the request was not granted, and on the contrary Popat was intimated that he would be allowed to stay in the room as long as the landlord did not demand back the possession. This instruction was issued to Popat on October 2, 1979, that is immediately after the death of the original allottee. The Competent Authority held that as the landlord has demanded back possession and has filed writ petition in the High Court, it is not possible to pass fresh order of allotment in favour of Popat. The claim that requisitioned premises were allotted in lieu of acquisition of building for the construction of receiving station was turned down. The Competent Authority also took into consideration the fact of the stay order granted by the Supreme Court in respect of dispossession of allottees, who were Government servants and observed that neither the original allottee nor Popat were at any time in Government employment. The Competent Authority therefore in exercise of powers conferred by sub-section (1) of Section 8C of the Act directed Popat to vacate the room within 30 days from the date of service of the order.

Popat carried an appeal before the appellate authority constituted under the provisions of the Act. The appellate authority concurred with the finding of the Competent Authority and upheld the order directing Popat to vacate the requisitioned premises. The appeal was dismissed by order dated June 7, 1989.

4. In consequence of the action taken by the Competent Authority, notice was issued to Popat on October 18, 1989 that possession will be recovered. On receipt of that notice, Popat filed Writ Petition No. 3030 of 1989 on October 20, 1989.

There is one more fact which is required to be stated, and that is, that on February 20, 1990 the Government in exercise of powers conferred by sub-section (1) and sub-section (3) of Section 9 of the Act released the room from

requisition and directed that the possession should be handed over to landlord Kapadia.

5. It is now well settled by decision of the Supreme Court *H.D. Vora Vs. State of Maharashtra and Others*, that the power of requisition conferred on the State Government under provisions of the Act cannot be exercised for an indefinite period. The Supreme Court highlighted the distinction between power of acquisition and power of requisition. The order of requisition is by its nature for a short duration and cannot be kept in operation for several years. In the present case the order of requisition was passed in the year 1957 and the Government cannot keep the order in force for a period of over 30 years. By catena of decisions of this Court it has been held that the Government is duty bound to revoke the order of requisition when the landlord demands back possession. Indeed in the present case the Government in accordance with the decision of the Supreme Court has issued order of derequisition on February 20, 1990 directing that possession of the requisitioned premises should be restored back to the landlord. In view of the order passed by the State Government, the relief sought by the landlord no longer survives.

6. The order of derequisition passed by the State Government and the order passed by the Competent Authority directing Popat to vacate the requisitioned premises is challenged in Writ Petition No. 3030 of 1989. Shri Sakhardande, learned counsel appearing on behalf of the legal representative of original allottee, did not dispute that neither the original allottee nor the legal representative were ever in employment of the Government. Shri Sakhardande submitted that the requisitioned room was allotted to the original allottee as he was homeless person and he became homeless because the building in which he was occupying room was acquired by the Government for setting up a receiving station. Shri Sakhardande submitted that as the premises were requisitioned for the benefit of a homeless person, such allotment must continue for all time to come. The submission has no merit. The power of requisition cannot be exercised for an indefinite period merely because the allottee was a homeless person in the year 1957. In case the Government desires to provide accommodation permanently to such persons, the powers under the Land Acquisition Act are required to be resorted to. The exercise of power or the jurisdiction to exercise the power should never be confused by considering that the order of derequisition would cause hardship to the original allottee or his legal representative. The allotment of requisitioned premises can never be permanent, as requisitioning can only be for short duration.

7. Shri Sakhardande then submitted that the decision in *H.D. Vora Vs. State of Maharashtra and Others*, is under reconsideration of the Supreme Court and Writ Petition No. 404 of 1986 filed by the President, Association of Allottees of requisitioned premises is referred to Bench of five Judges of the Supreme Court to examine the Constitutional validity of the amendment made in Section 9(1A) of the Act. Shri Sakhardande submitted that the Supreme Court has pass"ed

interim orders and in view of those orders it is not open for the Government to derequisition the premises or in any event disturb the possession of the person in occupation. In support of the submission reliance is placed on order dated 27-7-1986 passed in Writ Petition No. 404 of 1986. The relevant portion of the order reads as under:

"There will be interim order of stay against dispossession in favour of the allottees, save and except those Government servants who have ceased to be Government servants, in those cases where the requisition was made for housing Government servants. This order will be in supersession of the earlier stay order made by this Court. This interim order will protect those Government employees who are in occupation of the Government premises."

Shri Sakhardande submitted that C.M.P. No. 28842 of 1986 was filed by two applicants H. R. Pardivela and Susheela H. Shahani, who were not Government servants but who are allottees of premises and the Supreme Court was requested to clarify the order of interim stay granted earlier on July 27, 1986. The Supreme Court passed the order in the following terms :

"We had clearly stated that there will be interim stay against dispossession in favour of the allottees, save and except those who have ceased to be Government servants. The interim order was intended to be in favour of the allottees of the requisitioned premises whether Government servants or not save for the excepted category, because we were referring the issue of continued validity of the order of requisition to a Bench of 5 Judges to reconsider the earlier decision of this Court in Vohra's case. The only exception from the interim order was made in respect of these Government servants who have ceased to be Government servants by way of retirement etc. The applicants who have made the application for clarification admittedly do not fall within this category and hence they will be entitled to the benefit of our order under reference."

Shri Sakhardande submitted that in view of this interim order and in view of the fact that the Bench of five Judges have not yet disposed of the reference, it is incumbent upon the State Government not to pass any order of derequisition or direct any person in occupation of the requisitioned premises to vacate the same. It is not possible to accede to the submission.

8. The order of the Supreme Court must be read in its proper perspective. The initial order passed on July 27, 1986 provided stay against dispossession in favour of allottees who were Government servants. The order made it clear that the stay order would not be operative in favour of Government servants who have ceased to be in service. The clarification was given by the Supreme Court by order dated October 24, 1986 in pursuance of application made by two applicants who were not Government servants and to whom the premises were allotted by virtue of one being a trade union worker and another a displaced person, who reported the suppressed vacancy. The clarification issued by the Supreme Court makes it clear that the interim order was intended to be in favour

of the allottees of the requisitioned premises whether Government servant or not and the only exception was made in respect of Government servants who have ceased to be in Government service. Reading the two orders together, it is obvious that the Supreme Court had granted stay in favour of allottees, whether Government servants or not, in respect of dispossession from the requisitioned premises. The orders of the Supreme Court cannot enure for the benefit of the legal representatives of the allottees. The Supreme Court also did not prevent the State Government from derequisitioning the premises in exercise of statutory powers.

9. The Bombay Land Requisition Act, 1948 confers power upon the State Government to requisition vacant premises for any public purpose. Section 7 of the Act confers power upon the State Government to use or deal with the premises so requisitioned in such manner as may appear to be expedient. The requisitioned premises, if residential are allotted to various category of persons like Government servants and people dishoused due to the crash of buildings, people who are dispossessed because the lands are acquired by the Government for public project etc. The allotment order is issued in favour of a particular person and obviously the allotment is made to serve the public purpose. It is not in dispute that the allotment in the present case was made on September 4, 1957 in favour of Shankar B. Salunkhe as he was a victim of house collapse. The premises under dispute were requisitioned on August 31, 1957 for a public purpose, being housing a victim of house collapse. The allottee Shankar Salunkhe expired on February 27, 1978. Thereupon the allottee's son Popat requested the State Government to issue a fresh allotment order in his favour. Request was turned down by the Government and Popat was informed by Government order dated July 23, 1979 that he should vacate the premises. In spite of the order Popat was not evicted but allowed to occupy the premises till the landlord took objection for the occupation of the same. The fact that Popat will have to vacate the premises as soon as landlord takes objection to his occupation, was made clear by Government letter dated October 2, 1979. It is therefore obvious that the original allotment order in favour of Shankar Salunkhe came to an end on his death and thereafter Popat remained in occupation not in pursuance of the allotment order but purely as a grace till the landlord raised the objection.

10. The State Government in exercise of powers u/s 8B of the Bombay Land Acquisition Act has appointed an officer, who is holding an office which is not lower than the rank that of Assistant Secretary to the Government, as the Competent Authority. Section 8C deals with the power of the Competent Authority to evict a Government allottee or any other person authorised or permitted to occupy the premises requisitioned under the Act. The Competent Authority can by order in writing direct the person to vacate the requisitioned premises on several grounds including that the person is in unauthorised occupation or that the premises are released from requisition. An inquiry is contemplated u/s 8C(2) of the Act before an order of eviction is passed by the

Competent Authority. Such an enquiry was undertaken by the Competent Authority by issuing show cause notice dated October 17, 1988 u/s 8C(2)(a) of the Act on Popat Salunkhe. In response to the notice Popat appeared before the Competent Authority and by a detailed speaking order the Competent Authority came to the conclusion that Popat is not entitled to remain in occupation of the requisitioned premises. The Competent Authority by order dated January 11, 1989 held that the interim orders granted by the Supreme Court cannot enure for the benefit of legal representatives of original allottee and more so when the Government had declined to issue fresh order of allotment in favour of Popat. The Competent Authority thereupon directed Popat to vacate the premises within 30 days of the receipt of the order and hand over vacant possession to the State Government. This order was duly served upon Popat and Popat did not take any action to challenge the correctness of that order. As Popat failed to vacate the premises, on October 18, 1989 the Government issued an order directing Inspector in Accommodation Department to take such steps and use such force as is reasonable and necessary for taking possession of the premises. After service of this order, Popat approached this Court by filing Writ Petition No. 3030 of 1989.

11. It is obvious from the proceedings adopted by the Competent Authority u/s 8C of the Act that Popat had no legal or valid right to remain in occupation of the requisitioned premises at any stage. The original allotment order being in favour of Popat's father, the allotment came to an end on the death of Popat's father. Popat tried to secure a fresh allotment in his favour but Government declined to do so that permitted Popat to remain in occupation till the landlord objected. It is therefore obvious that the interim orders passed by the Supreme Court cannot enure for the benefit of Popat. The interim orders passed by the Supreme Court were in favour of allottees who were in occupation and who were likely to be dispossessed in view of the decision of the Supreme Court in *Vora's case*. The persons who are in unauthorised occupation of requisitioned premises cannot take shield behind the interim orders of the Supreme Court and retain possession.

12. Shri Sakhardande, appearing on behalf of Popat Salunkhe, submitted that the original allotment order must enure for the benefit of Popat also. It was contended that the requisitioned premises were allotted to the father of Popat for a public purpose, being to house victim of house collapse and as Popat was residing with his father the allotment order should be construed to be in favour of not only Popat's father but also the members of the family. It is not possible to accede to the submission, because the allotment order in favour of Popat's father was to assist a victim of house collapse and that order was passed in the year 1957. The right to occupy requisitioned premises is a personal right and it cannot be inherited, nor can such a right be ensured in favour of the family members of the allottees. It is not a secret that the members of the allottees' family in several cases have secured independent and specious accommodation after the allotment order and therefore the Government does not as a matter of right issue fresh allotment order in favour of members of the family. The plain

reading of provisions of the Act also makes it clear that the allotment is always in favour of a particular individual. The order of allotment is issued to serve a public purpose and such purpose may not exist in case of legal heirs of original allottee. Shri Sakhardande relied upon decision dated November 12, 1981 of a single Judge of this Court in Miscellaneous Petition No. 1149 of 1978. Before the learned single Judge it was contended that it is the policy of the State Government not to dispossess the heirs and legal representatives of the deceased allottee residing with such deceased at the time of his death. The averments made in the petition were not denied in the return filed on behalf of the Government and therefore the learned Judge proceeded to hold that the averments with respect to the Government policy be deemed to be admitted. On the strength of this finding, the learned Judge issued a writ restraining the respondents from evicting the daughter of the original allottee from the requisitioned premises. Shri Sakhardande submitted that the decision of the single Judge was confirmed by Division Bench by order dated April 5, 1982 in Appeal No. 152 of 1982. The Appellate Court summarily dismissed the appeal observing that in absence of denial in the return the claim that the Government as a policy permits legal representatives of allottees to remain in occupation should be deemed to have been accepted. It is not possible to rely upon these judgments to hold that the legal representatives are entitled as a matter of right to succeed to the allotment order. In the first instance as pointed out hereinabove the allotment is a personal right and must come to an end on the death of the allottee. If the allotment is considered as the heritable right, then even the legal representative of a Government servant, who ceased to be in service, would claim right to remain in occupation. Secondly, the decision of the learned single Judge was recorded long prior to the decision recorded by the Supreme Court in *Vora's* case in the year 1984. Prior to the decision in *Vora's* case the action of the Government to continue requisition for an indefinite period was never challenged. The decision of the single Judge therefore must be read with that background and it is not possible to spell out an enforceable right in favour of legal representative of deceased allottee from this decision. Thirdly, in the present case Popat did seek a fresh allotment order after the death of his father in the year 1978 and that request was specifically turned down by order dated July 23, 1979. Popat was permitted to occupy requisitioned premises by order dated October 2, 1979 on specific understanding that the occupation is permitted till the landlord objects. In these circumstances, it is impossible to accede to the submission that Popat is entitled to remain in occupation of the requisitioned premises as legal representative of his father and the order of derequisition and order of eviction cannot be enforced against Popat. In my judgment, the order of eviction against Popat does not suffer from any infirmity and is required to be upheld. The interim orders passed by Supreme Court can be of no assistance to Popat.

13. Accordingly, Writ Petition No. 3030 of 1989 fails and rule is discharged with costs.

Rule in Writ Petition No. 2025 of 1983 is made partly absolute and the State Government is directed to recover possession of the premises from Popat in pursuance of the derequisition order and hand over the same to landlord Kapadia. There will be no order as to costs.

Respondents Nos. 1 and 2 shall pay the arrears of compensation to the landlord with- in a period of four weeks from today.

14. Order accordingly.